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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: NOV 16 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

S Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. On the petition, the petitioner lists her current occupation as a pediatric consultant but left blank the section about her proposed employment. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and a new reference letter. Counsel also resubmits the entire initial submission, which was already part of the record of proceeding. For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not demonstrated her eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a 1997 medical degree in pediatrics and a 1993 Master of Science in pediatrics from Cairo University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, pediatrics. The director then concluded that the proposed benefits of the petitioner's work as a practicing physician would not be national in scope. On appeal, counsel asserts that the petitioner has engaged in research and is currently a "Pediatric Consultant" at the New Jeddah Clinic Hospital where she is a regular lecturer. Counsel asserts that the petitioner will continue as a researcher and lecturer in the United States.

In addressing this issue, *NYSDOT,* 22 I&N Dec. at 217, n.3 states:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. Under this reasoning, while pediatrics has substantial intrinsic merit, the impact of a single pediatrician is negligible at the national level. Significantly, after *NYSDOT,* 22 I&N Dec. at 215 was issued, Congress added a separate national interest waiver provision that would apply to physicians working in an underserved area. Section 203(b)(2)(B)(ii) of the Act. The petitioner does not seek benefits under this provision. Similarly, while medical education has substantial intrinsic merit, the impact of a single lecturer in pediatrics is also negligible at the national level. Thus, the petitioner's only activities that might have a national impact are the petitioner's research activities.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner submitted several certificates of course attendance and completion, evidence of her membership in the [redacted] and her license as a consultant in Saudi Arabia and as [redacted]. The petitioner also documented more than ten years of experience. Academic certificates, experience, licensure and professional memberships are all factors in evaluating eligibility as an alien of exceptional ability. 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B), (C) and (E). By statute, exceptional ability by itself is not sufficient cause for a national interest waiver. *Id.* at 218. As such, submitting evidence relating to the regulatory criteria for that classification is not

presumptive evidence that the alien employment certification process should be waived in the national interest. *Id.* at 222.

The petitioner submitted 12 articles. One of these articles does not bear the name of the journal in which it appeared and two additional articles bear no journal title, pagination or other indicia of publication. The petitioner did not provide any evidence of the circulation of the journals in which her articles appeared. While these articles may reflect original work, as stated above, original innovation is insufficient by itself. We must decide whether the specific innovation serves the national interest on a case-by-case basis. *Id.* at 221, n. 7. The petitioner did not submit any evidence that other researchers have cited her articles or other evidence of the articles' influence in the field.

The petitioner also submitted an asthma pamphlet from [redacted]. The petitioner, along with three other doctors, jointly prepared the pamphlet. The petitioner's portion appears to be answers to frequently asked questions. The petitioner has not demonstrated that the responses represent her own original research rather than general knowledge in pediatrics. Moreover, the petitioner did not submit evidence that this pamphlet is widely influential or even that it is used beyond the hospital where the petitioner works.

Finally, the petitioner submitted reference letters. [redacted] and [redacted] affirms the petitioner's "research capabilities, writing skills and productivity" and characterizes her as an "indefatigable researcher." [redacted] does not explain the petitioner's research findings or how they have influenced the field of pediatrics. Rather, he asserts generally that the petitioner's "elucidation of the mechanisms and clinical features of many pediatric and neonatology disorders garnered her [a] real famous and respectable reputation in her field." U.S. Citizenship and Immigration Services (USCIS) need not accept primarily conclusory assertions.[1]

[redacted], another pediatric consultant at the [redacted], praises the petitioner's knowledge in child health and experimental skills. While [redacted] asserts generally that the petitioner has a "level of expertise significantly above that ordinarily encountered in the field," that is the standard for exceptional ability, a classification that, by statute, normally requires an approved alien employment certification. *Id.* at 218. We reiterate that exceptional ability by itself is not grounds to waive that requirement in the national interest. *Id.* at 218, 222. Finally, [redacted] concludes that in light of the petitioner's "past achievements and the need for her services in society[,] her presence in the United States would thus strongly contribute to the U.S. national interest." Once again, [redacted] does not explain the petitioner's research results or how they have influenced the field. We reiterate that USCIS need not accept primarily conclusory assertions.[2]

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[1] *See 1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).
[2] *See 1756, Inc.*, 745 F. Supp. at 15.

The petitioner also submitted a letter purportedly from [redacted]. This letter, however, is unsigned and, thus, has no evidentiary value.

On appeal, the petitioner submits a letter from [redacted] concludes:

> Moreover, it is my opinion, that the national interest of the United States would be adversely affected if [the petitioner] were required to obtain a labor certification, as she possesses the unique combination of professional achievement and research ability in [the] field of pediatric illness and pediatric medicine, not to mention the extraordinary academic credentials to improve pediatric health and treat pediatric and childhood illness."

It cannot suffice to state that the alien possesses useful skills, or a "unique background." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *Id.* at 221.

More specifically, [redacted] asserts that the petitioner "possesses extensive experience in Pediatric Medicine developing treatments for various severe illnesses." While [redacted] identifies several childhood diseases and asserts that treating them is in the national interest, he does not explain what treatments the petitioner developed or how those treatments are being applied in the field. [redacted] lists the petitioner's publications, already apparent from the record of proceeding that contains these articles. [redacted] does not explain how these articles have influenced the field. For example, he does not claim to be utilizing any treatments set forth in these articles or provide examples of independent institutions that are doing so. [redacted] speculates as follows:

> [The petitioner's] permanent residence in the U.S. will invariably lead to improved diagnostic, preventive and medical techniques and methodologies that will improve the outlook and lives of thousands of children suffering from acute and chronic illness which ultimately impacts the [*sic*] both the productivity and health of our nation as a whole.

[redacted] then asserts that the alien certification process takes three years and it is against the national interest to force someone with the petitioner's skills in pediatrics to go through this process. [redacted] provides no source for his assertion that the alien certification process, which was streamlined in 2005, currently takes three years.[3] Regardless, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223.

[3] 69 Fed. Reg. 77386 (Dec. 27, 2004).

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of skill without specifically identifying innovations and providing specific examples of how those innovations have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[4] The petitioner submitted only a single independent letter and this letter does not suggest the author has applied the petitioner's work. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to

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[4] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.* 745 F. Supp. at5.

grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.